

Message Text

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ACTION EUR-25

INFO OCT-01 ADP-00 SSO-00 L-03 SCA-01 JUSE-00 TRSE-00

SEC-03 INRE-00 CIAE-00 INR-10 NSAE-00 RSC-01 NSCE-00

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O 231010 Z MAY 73

FM AMEMBASSY BERN

TO SECSTATE WASHDC IMMEDIATE 7755

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DEPT FOR EUR/ CE SUTTERLIN, L MCDOWELL; PASS JUSTICE PETERSEN;
PASS TREASURY MORGAN; PASS SEC POLLACK

E. O. 11652: N/ A

TAGS: EFIN, PFOR, US, SZ

SUBJ: JUDICIAL ASSISTANCE TREATY - NEW CHAPTER IV

REF: BERN 2089

1. DURING INITIAL MEETINGS ON TREATY, SWISS PRESENTED NEW PROPOSAL INTENDED PLACE MORE RESTRICTIONS ON USE OF INFORMATION OBTAINED UNDER THE TREATY. THE US TEAM MADE NUMBER OF OBJECTIONS, THEN COUNTER PROPOSALS WHEN IT BECAME APPARENT AGREEMENT IN GENERAL AREA WAS PART OF SWISS MANDATE FROM FEDERAL COUNCIL.

2. RESULT OF NEGOTIATIONS, AGREED TO ON MAY 22, IS THAT SENT SEPTTEL AND IS CONCURRED IN BY JA TEAM AS BEING BOTH ESSENTIAL TO THE SWISS AND ACCEPTABLE TO USG. THE THREE ARTICLES, ADDITIONAL PARAGRAPH TO ARTICLE 36, AND EXCHANGE OF LETTERS SHOULD BE VIEWED AS PACKAGE.

3. ARTICLE 12 BIS ORIGINALLY INTENDED PREVENT USE TESTIMONY IN OTHER CRIMINAL PROCEEDING. AS NEGOTIATED, ARTICLE LIMITED TO PREVENT USE OF TESTIMONY ONLY WHERE WITNESS NOT ADVISED HIS RIGHT REFUSE TESTIMONY PURSUANT ARTICLE 10:1 AND THIS SUBJECT
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TO EXCEPTION IF OFFENSE IS AGAINST ADMINISTRATION OF JUSTICE.

4. ARTICLE 12 TER DESIGNED TO MEET SWISS CONCERN THAT PERSON WHO REFUSED GIVE NON- COMPULSORY TESTIMONY OR AGAINST WHOM COMPULSORY MEASURES HAD TO BE APPLIED WOULD NOT BE SUBJECT TO SANCTIONS IN REQUESTING STATE SOLELY BECAUSE OF HIS REFUSAL TO COOPERATE.

5. SINCE ARTICLE 12 TER GRANTS RIGHT, IT WAS NECESSARY INDICATE REMEDY. AIM WAS TO HAVE REMEDY BE APPROACH TO CENTRAL AUTHORITY WHICH, IF IT CONCURRED THAT REQUESTING STATE WAS SUBJECTING INDIVIDUAL TO IMPROPER SANCTION, WOULD TAKE MATTER UP WITH REQUESTED STATE UNDER ARTICLE 38 (CONSULTATION AND ARBITRATION). RESULT IS NEW PARAGRAPH 3 TO ARTICLE 36 (REVIEW OF DETERMINATIONS). ALLEGATION OF IMPROPER SANCTION WOULD, IF SUBSTANTIATED, CONSTITUTE VIOLATION OF OBLIGATION UNDER 12 TER. REMEDY FOR SAME NOT CONTAINED IN 36:1 OR 2 AND THEREFORE FALLS TO NEW PARAGRAPH 3. IT THEN UNDERSTOOD THAT PROBLEM, IF REQUESTED STATE AGREES WITH INDIVIDUAL, WOULD BE TAKEN UP UNDER ARTICLE 38 (NOW RENUMBERED AS 39). REQUIREMENT TO USE CENTRAL AUTHORITY INTENDED PREVENT MATTER BEING RAISED OR RESOLVED BY COURT OR APPEAL TO COURT, APART FROM APPEAL IN MATTER IN WHICH SANCTION SOUGHT.

6. ARTICLE 12 QUATER WOULD GIVE SWITZERLAND RIGHT TO REQUEST U. S. TO ATTEMPT KEEP FROM PUBLIC DISCLOSURE INFORMATION GIVEN PURSUANT TO ARTICLE 10:2 (REQUIREMENT FOR DISCLOSURE OF INFORMATION WHICH UNDER SWISS LAW WOULD BE SECRET SINCE IT WOULD AFFECT THIRD PARTIES). U. S. TEAM SPENT MUCH TIME EXPLAINING CONSTITUTIONAL AND PRACTICAL DIFFICULTIES AND POSSIBILITIES USG WOULD HAVE UNDER A STRIC NONDISCLOSURE REQUIREMENT WHICH WAS ORIGINAL SWISS PROPOSAL. IN PROCESS SWISS REQUESTED LETTER ON SUBJECT AND INDICATED THEY WOULD ACKNOWLEDGE. RESULTING EXCHANGE OF LETTERS BELIEVED TO CLARIFY SITUATION DEMONSTRATING EXTENT TO WHICH U. S. CAN GO AND INDICATING OUR WILLINGNESS TO ATTEMPT TO COMPLY WITH AN ARTICLE 12 QUATER REQUEST WITHIN THE LIMITS OF OUR CONSTITUTIONAL SYSTEM. LETTER BELIEVED GENERALLY SELF- EXPLANATORY. PERCIVAL

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